

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

Crl.MC.No. 627 of 2007()

SC.679/2006 of ADDL. SESSIONS COURT (ADHOC), THRISSUR
CP.13/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD
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PETITIONER: 8TH ACCUSED

ISMAYIL, S/O.IBRAHIM,
KARAPPAM VEETIL, ARIYANNUR DESOM.

BY ADV. SRI.P.K.ANIL

RESPONDENTS: COMPLAINANT/STATE

1. SUB INSPECTOR OF POLICE,
GURUVYLOOR POLICE STATION.
2. STATE REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

Crl.M.C.No.627 of 2007

Dated this the 7th day of March, 2007

ORDER

The petitioner is the 8th accused in a Sessions Case, where the allegations raised are, inter alia, under Sections 326 & 307 read with 149 I.P.C. Altogether there were 14 accused persons. Some of the co-accused have already been tried. They having found not guilty and acquitted. Trial could not be undertaken as the petitioner was not available.

2. The petitioner has come to this Court with this petition under Section 482 Cr.P.C to quash the proceedings initiated against him.

3. What is the reason ? The learned counsel for the petitioner contends that in the trial conducted against the co-accused, there was absolutely no evidence against such accused and all of them were found not guilty and acquitted. It is further submitted that the victims concerned have absolutely no grievance against the petitioner now and they are thick friends. They have settled their disputes.

4. Offences are not compoundable. The offences include serious offences punishable, inter alia, under Sections 326 and 307 read with 149 I.P.C. I have been taken through the judgment of acquittal of the co-accused. Co-accused became entitled to acquittal

on the ground that there was no evidence against them in the trial which was held. According to me, the dictum in **Moosa v. Sub Inspector of Police** [2006 (1) K.L.T 552] squarely covers the issue. The fact that the co-accused have been acquitted on account of the hostility of the witnesses in the trial against the co-accused, is no reason for an absconding co-accused ip so facto to claim any benefit or advantage. There was no question of the court considering the evidence against the petitioner in such a trial against the co-accused. The prosecution was not expected to adduce and the court was not expected to consider any such evidence which may be there against the petitioner. I am, in these circumstances, satisfied that the prayer for quashing of the proceedings cannot be accepted.

5. The learned counsel for the petitioner then contends that the petitioner was unaware of the proceedings and that he was obliged to leave for his place of employment abroad. That is why he could not appear before the court at the time of trial. The petitioner is now prepared to surrender before the learned Judge and co-operate with the court for completion of the proceedings. But he apprehends that his application for bail may not be considered by the learned Judge on merits, in accordance with law and expeditiously. It is, in these circumstances, prayed that direction under Section 482 Cr.P.C may be issued to the learned Judge to release the petitioner on bail on the date of his surrender.

6. I find no merit in the prayer to invoke the powers under Section 482 Cr.P.C. It is for the petitioner to appear before the learned Magistrate and explain to the learned Judge the circumstances under which he could not earlier appear before the learned Judge. I have no reason to assume that the learned Judge would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

7. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

H/O.

(R.BASANT, JUDGE)

rtr/-